

MDM Declaration Exhibit A-07

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 No. 18 Civ. 2949 (ARR) (RER)

- - - - -x

5
6 SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

7
8 Plaintiffs,

-against-

9
10 XOOM ENERGY, LLC AND XOOM ENERGY
NEW YORK, LLC,
11 Defendants.

12 - - - - -x

13
14 16 Court Street
Brooklyn, New York 11241

15
16 August 30, 2022
10:21 a.m.

17
18 DEPOSITION of SUSANNA MIRKIN (REDACTED),
19 a Plaintiff in the above-entitled action,
20 held at the above time and place, taken
21 before SAMUEL HITTIN, a Shorthand Reporter
22 and Notary Public of the State of New
23 York, pursuant to the Federal Rules of
24 Civil Procedure, order and stipulations
25 between Counsel.

<p>1 2 APPEARANCES: 3 4 WITTELS, McINTURFF, PALIKOVIC 5 Attorneys for Plaintiffs 6 SUSANNA MIRKIN and BORIS MIRKIN 7 295 Madison Avenue 8 New York, New York 10017 9 (914)775-8862 10 BY: STEVEN WITTELS, ESQ. 11 AND: STEVEN COHEN, ESQ. 12 13 14 MCDOWELL HETHERINGTON, LLP 15 Attorneys for Defendants 16 XOOM ENERGY, LLC AND XOOM ENERGY 17 NEW YORK, LLC 18 1001 Fannin Street, Suite 2700 19 Houston, Texas 77002 20 (713)337-5580 21 BY: MATT MATTHEWS, ESQ. 22 23 ALSO PRESENT: 24 VERITEXT VIDEOGRAPHER 25 BY: ZEF COTA 26 27 * * *</p> <p style="text-align: right;">Page 2</p>	<p>1 2 controlled thereby. 3 The filing of the original of this 4 deposition is waived. 5 IT IS FURTHER STIPULATED, a copy of 6 this examination shall be furnished to the 7 attorney for the witness being examined 8 without charge. 9 10 * * * 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 4</p>
<p>1 2 STIPULATIONS 3 IT IS HEREBY STIPULATED, by and among 4 the attorneys for the respective parties 5 hereto, that: 6 All rights provided by the C.P.L.R., 7 and Part 221 of the Uniform Rules for the 8 Conduct of Depositions, including the 9 right to object to any question, except as 10 to form, or to move to strike any 11 testimony at this examination is reserved; 12 and in addition, the failure to object to 13 any question or to move to strike any 14 testimony at this examination shall not be 15 a bar or waiver to make such motion at, 16 and is reserved to, the trial of this 17 action. 18 This deposition may be sworn to by the 19 witness being examined before a Notary 20 Public other than the Notary Public before 21 whom this examination was begun, but the 22 failure to do so or to return the original 23 of this deposition to counsel, shall not 24 be deemed a waiver of the rights provided 25 by Rule 3116, C.P.L.R., and shall be</p> <p style="text-align: right;">Page 3</p>	<p>1 2 THE VIDEOGRAPHER: Good morning. 3 We are going on the record at 4 10:22 a.m. Eastern Daylight Time on 5 August 30, 2022. Please note that the 6 microphones are sensitive and may pick 7 up whispering and private 8 conversations. Please mute your 9 phones at this time. Audio and video 10 recording will continue to take place 11 unless all parties agree to go off the 12 record. 13 This is media unit one of the 14 video-recorded deposition of Susanna 15 Mirkin, taken by counsel in the matter 16 of Susanna Mirkin and Boris Mirkin, 17 et al., versus XOOM Energy, LLC, and 18 XOOM Energy New York, LLC, filed in 19 the United States District Court, 20 Eastern Division of New York, Case 21 Number 18-CIV-2949. 22 The location of this deposition 23 is Veritext Brooklyn, 16 Court Street, 24 Brooklyn, New York. 25 My name is Zef Cota,</p> <p style="text-align: right;">Page 5</p>

<p>1 2 representing Veritext, and I am the 3 videographer. The court reporter is 4 Samuel Hittin, from the firm Veritext. 5 I am not authorized to administer an 6 oath, I am not related to any party in 7 this action, nor am I financially 8 interested in the outcome. 9 If there are any objections to 10 proceeding, please state them at the 11 time of your appearance. Counsel and 12 all present, including remotely, will 13 now state their appearances and 14 affiliations for the record, beginning 15 with the noticing attorney. 16 MR. MATTHEWS: This is Matt 17 Matthews with the law firm of McDowell 18 Hetherington on behalf of the 19 defendants, XOOM Energy. 20 MR. WITTELS: Steven Wittels for 21 the plaintiff, Mirkins. I'm together 22 with my co-counsel, Steve Cohen -- 23 Steven Cohen, from the law firm 24 Wittels, McInturff, Palikovic. 25 MR. MATTHEWS: Thank you.</p> <p style="text-align: right;">Page 6</p>	<p>1 S. MIRKIN 2 A. Good morning. 3 Q. Thank you for being here today. 4 Could you please state your full 5 name for the record. 6 A. Susanna Mirkin. 7 Q. Okay. And what is your maiden 8 name? 9 A. Aminova. 10 Q. And, Ms. Mirkin, have you been 11 deposed before? 12 A. Have I been? 13 Q. So the exercise that we're going 14 through here today as part of this lawsuit 15 is called a deposition. 16 A. Okay. 17 Q. Where -- I'm sure your counsel 18 has visited with you a little bit, but I'm 19 going to go over some ground rules, just 20 to be sure that we're on the same page and 21 that you understand. I'm going to ask you 22 questions and your answers are provided 23 under oath. 24 Do you understand that? 25 A. Yes.</p> <p style="text-align: right;">Page 8</p>
<p>1 2 And appearing by phone, just to 3 listen, are Christina Dillard, who's 4 in-house counsel for XOOM, and Emily 5 Felix, who is also with the McDowell 6 Hetherington law firm. 7 THE VIDEOGRAPHER: Will the 8 court reporter please swear in the 9 witness, and then counsel may proceed. 10 11 S U S A N N A M I R K I N, the Witness 12 herein, having first been duly sworn by 13 the Notary Public, was examined and 14 testified as follows: 15 BY COURT REPORTER: 16 Q. Please state your name for the 17 record? 18 A. Susanna Mirkin. 19 Q. Please state your address for 20 the record? 21 A. 1677 East 34th Street, Brooklyn, 22 New York 11234. 23 EXAMINATION BY 24 MR. MATTHEWS: 25 Q. Good morning, Ms. Mirkin.</p> <p style="text-align: right;">Page 7</p>	<p>1 S. MIRKIN 2 Q. Okay. And it's with the same 3 sort of weight and penalty -- potential -- 4 that they would have in a court of law. 5 Do you understand that? 6 A. I do. 7 Q. Okay. And with that 8 understanding that that's, in a nutshell, 9 what a deposition is, have you ever given 10 your deposition before? 11 A. With XOOM, or in general? 12 Q. In any case. 13 A. Yes. 14 Q. Yes. And when was that? 15 [Whereupon, testimony is 16 continued in confidential portion of 17 transcript.] 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 9</p>

1 S. MIRKIN
 2 Q. Okay. So you come to the United
 3 States when you were about 12 years old,
 4 right?
 5 A. 9.
 6 Q. Oh. Okay. And did you move to
 7 New York right away?
 8 A. Yes.
 9 Q. And have been here ever since?
 10 A. Yes.
 11 Q. And you live in Brooklyn
 12 currently?
 13 A. I do.
 14 Q. Have you always lived in
 15 Brooklyn?
 16 A. I lived in Queens.
 17 Q. When did you live in Queens?
 18 A. I don't have exact dates, the
 19 years.
 20 Q. That's okay. What's the
 21 ballpark?
 22 A. In 2000s.
 23 Q. Okay. Do you remember the
 24 address?
 25 A. No, not exactly.

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1 S. MIRKIN
 2 Q. Okay. Aside from the period of
 3 time that you've lived in Queens, you've
 4 always lived in Brooklyn --
 5 A. Mm-hmm. Yes.
 6 Q. -- ever since 1990?
 7 And your current address is
 8 what?
 9 A. 1677 East 34th Street, Brooklyn,
 10 New York 11234.
 11 Q. And do you own or rent that
 12 property?
 13 A. We own.
 14 Q. You and --
 15 A. My husband.
 16 Q. -- Boris Mirkin own it jointly?
 17 A. Yes.
 18 Q. And who lives there with you?
 19 A. Us and our kids.
 20 Q. How long have you lived at that
 21 address?
 22 A. 12 years.
 23 Q. Have you owned or rented any
 24 other properties during that 12-year
 25 period?

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1 S. MIRKIN
 2 A. No.
 3 Q. Have you and Mr. Mirkin ever
 4 owned any other properties?
 5 A. No.
 6 Q. Do you remember the address you
 7 lived at before moving to 1677 East 34th?
 8 A. I lived in Queens.
 9 Q. I see.
 10 Okay. Ms. Mirkin, you've never
 11 live in Staten Island, right?
 12 A. No.
 13 Q. Okay. And do you understand
 14 that there has been some documents
 15 produced in this case that show a Boris
 16 Mirkin receiving gas service from XOOM
 17 Energy?
 18 A. I saw that, yes.
 19 Q. Okay. But that is not your
 20 husband?
 21 A. That is not my husband.
 22 Q. That's a different Boris Mirkin?
 23 A. Correct.
 24 Q. Is that Boris Mirkin related to
 25 your husband?

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1 S. MIRKIN
 2 A. I think he's a cousin.
 3 Q. Okay.
 4 A. My husband would know more about
 5 this Boris Mirkin.
 6 Q. Yes. But just to show you --
 7 MR. MATTHEWS: Can I have the
 8 stickers. Thank you.
 9 Q. Ms. Mirkin, I'm going to mark
 10 this document, which is an e-mail. The
 11 heading says New Customer Enrollment, just
 12 so we're -- we know we're talking about
 13 the same thing.
 14 A. Sure.
 15 Q. I'm going to hand you that.
 16 A. Mm-hmm.
 17 [Whereupon, document was marked
 18 as Defendants' Exhibit 4 for
 19 identification, as of this date.]
 20 Q. This is a document that's been
 21 Bates-labeled XOOM INIT 12 through 13.
 22 Have you seen this document
 23 before?
 24 A. No.
 25 Q. No. Fair enough.

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1 S. MIRKIN
2 The billing info there, you
3 see it shows Boris Mirkin, 21 Peggy Lane,
4 Staten Island, New York 10306? Do you see
5 that?
6 A. I see that.
7 Q. And that's not your husband?
8 A. That's not my husband.
9 Q. And the phone number is not --
10 A. That's --
11 Q. -- your husband's phone number,
12 and you've never seen that e-mail address
13 either?
14 A. No.
15 Q. Okay. So this account that is
16 referred to in Exhibit 4 is not an account
17 that ever belonged to or was used by you
18 or your husband?
19 A. Correct.
20 Q. And to the best of your
21 knowledge, you've never had natural gas
22 service with XOOM Energy, correct?
23 A. Yes. Correct.
24 Q. And neither has your husband, to
25 the best of your knowledge?

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1 S. MIRKIN
2 A. I'm not sure. He takes care of
3 all the bills, so I'm not sure.
4 Q. Okay. Okay. And you personally
5 don't know anything about the natural gas
6 rates that XOOM charged in New York since
7 it entered the market here, correct?
8 A. The gas?
9 Q. Yes, ma'am.
10 A. No.
11 Q. You said that your husband is
12 the one who takes care of the bills. Is
13 he generally -- is it fair to say he's the
14 one who is generally in charge of energy
15 decisions in the house?
16 A. Correct.
17 Q. Does he consult with you about
18 retail energy decisions?
19 A. Sure, we discuss it, but he
20 takes care of it at the end.
21 Q. Okay. Just help me understand
22 in a basic way how it works in your
23 household with respect to selecting energy
24 providers for electricity or natural gas.
25 A. So he basically looks for the

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1 S. MIRKIN
2 best rates out there, and he just says,
3 you know, This is the best. I say, Okay,
4 do whatever you want.
5 Q. Do you know where he looks?
6 A. Online. I mean, that's the best
7 option out there.
8 Q. Yeah. Nothing -- I don't mean
9 to suggest there's anything wrong with
10 that.
11 A. Right.
12 Q. I'm just -- I don't -- I'm
13 trying to get a sense of, does he -- does
14 he call companies, does he go visit with
15 door-to-door salespeople, or does he --
16 A. In my knowledge --
17 Q. -- just do it online?
18 MR. WITTELS: Object to the
19 form. Multiple questions. If you
20 want to break it up.
21 MR. MATTHEWS: No. That's okay.
22 MR. WITTELS: You asked two at
23 the same time.
24 MR. MATTHEWS: Yeah. That's
25 okay.

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1 S. MIRKIN
2 MR. WITTELS: Object to the
3 form.
4 If you understand it, you can
5 answer.
6 THE WITNESS: Okay.
7 A. In my knowledge, he looks
8 through the internet. That's the best
9 way.
10 Q. Okay. So making retail energy
11 decisions in your house, how it generally
12 works is, Mr. Mirkin looks online to shop
13 for the best rates available, he sometimes
14 speaks with you about it, and then he is
15 the one who takes care of the actual
16 enrollment?
17 A. Correct.
18 MR. WITTELS: Object.
19 Give me time to answer --
20 object. It's fine for you to answer.
21 Just give me time on the record before
22 you answer and after he asks his
23 question, please.
24 Object to the form of that.
25 You already answered.

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1 S. MIRKIN
 2 Q. Your answer was yes?
 3 A. Yes.
 4 Q. That's generally how it works?
 5 A. Right.
 6 Q. Okay. Ms. Mirkin, do you know
 7 who your current supplier is for
 8 electricity?
 9 A. Con Edison.
 10 Q. Con Edison.
 11 And since when has Con Edison
 12 been your supplier for electricity?
 13 A. I'm not sure.
 14 Q. Do you know what your current
 15 rate is for electricity?
 16 A. No.
 17 Q. Okay. And do you know if your
 18 rate is fixed or variable?
 19 A. I don't know.
 20 Q. With respect to natural gas,
 21 who's your current supplier for natural
 22 gas?
 23 A. National Grid.
 24 Q. And how long has National Grid
 25 been your supplier for natural gas?

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1 S. MIRKIN
 2 A. I'm not sure. My husband takes
 3 care of everything, so I'm not sure.
 4 Q. That's okay.
 5 Ms. Mirkin, have you ever heard
 6 the term "ESCO"?
 7 A. Yes.
 8 Q. Okay. And tell me, in your
 9 words, what an ESCO is.
 10 A. ESCO is an energy supply
 11 company.
 12 Q. You understand that's -- it's a
 13 private company that's run for profit,
 14 correct?
 15 MR. WITTELS: Objection.
 16 You can answer, if you
 17 understand what he's asking. Don't
 18 guess.
 19 A. I'm not sure what you mean.
 20 Q. Sure. Okay.
 21 You understand that Con Edison
 22 and National Grid are default utility
 23 options, correct?
 24 A. Correct.
 25 Q. Okay. And that's contrasted, in

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1 S. MIRKIN
 2 some ways, with an ESCO, which is a -- an
 3 ESCO is a private company, and you
 4 understand that its rates are not set by
 5 regulators, correct?
 6 MR. WITTELS: Objection to the
 7 form.
 8 If you can -- if you know. Only
 9 if you know.
 10 A. I don't know.
 11 Q. Okay. Do you understand the
 12 utility rate to be a regulated rate?
 13 MR. WITTELS: Objection.
 14 A. I don't know.
 15 Q. Okay. Do you understand an
 16 ESCO's rate to be a competitive rate that
 17 can move with the market?
 18 MR. WITTELS: Objection.
 19 A. According to the complaint that
 20 you have, that I brought in, that we have
 21 a list, and it has a grid where it
 22 compares to market and XOOM or Con Edison
 23 and other suppliers. So I do have that at
 24 hand. And it was determined by the
 25 experts and by our lawyers.

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1 S. MIRKIN
 2 Q. You're referring to the
 3 allegations in the complaint?
 4 A. Correct.
 5 Q. Okay. Did you help prepare
 6 those allegations?
 7 A. Did I help? No.
 8 Q. Okay.
 9 A. It was all with lawyers and
 10 experts.
 11 MR. WITTELS: By the way, can
 12 the witness have her documents back?
 13 MR. MATTHEWS: I'll give it to
 14 her in a little bit.
 15 MR. WITTELS: I'd like her to
 16 have the documents. She brought them
 17 and I'd like her to have them.
 18 MR. MATTHEWS: I understand.
 19 But I'm going to test her recollection
 20 about something.
 21 MR. WITTELS: No, no, you're
 22 not.
 23 MR. MATTHEWS: You're welcome to
 24 give her the documents when you --
 25 MR. WITTELS: No. They're our

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1 S. MIRKIN
 2 question, please.
 3 [Whereupon, a portion of the
 4 testimony was read back.]
 5 MR. WITTELS: Objection.
 6 A. So according to the contract --
 7 Q. And you're looking at Exhibit 3
 8 right now?
 9 A. Correct.
 10 Q. Okay.
 11 A. I just wanted to make sure
 12 that -- that you know that I'm reading
 13 from the contract.
 14 Q. Mm-hmm.
 15 A. It says our monthly variable
 16 rate is based on XOOM's actual and
 17 estimated supply costs.
 18 Q. I agree that the contract says
 19 that. Do you know anything about what
 20 XOOM's actual or estimated supply costs
 21 were during the time that you and your
 22 husband were electricity customers of
 23 XOOM?
 24 A. So the first month's, when we
 25 applied, it was a teaser plan, which that

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1 S. MIRKIN
 2 increased the next month, and the next
 3 month after that, until November. So
 4 that's why -- that's why there's
 5 significant changes.
 6 Q. I understand, but that wasn't my
 7 question. My question was, do you know --
 8 you referred me to the contract language
 9 on Exhibit 3 --
 10 A. Mm-hmm.
 11 Q. -- that said the variable rate
 12 would be based on XOOM's actual and
 13 estimated supply costs --
 14 A. Correct.
 15 Q. -- right?
 16 And my question is, do you know,
 17 during the time period that you and your
 18 husband were XOOM electricity customers,
 19 what XOOM's actual and estimated supply
 20 costs were?
 21 A. At the time, my husband probably
 22 knew, because he does take care of the
 23 bills and everything else with it. So he
 24 probably knew, yes.
 25 Q. As we sit here today, you don't

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1 S. MIRKIN
 2 know what XOOM's actual and estimated
 3 supply costs were during the time period
 4 that you were a XOOM electricity customer?
 5 A. At the time, no.
 6 Q. Not at the time, and not today?
 7 A. Can you repeat that?
 8 Q. Sure.
 9 You have not ever had an
 10 understanding about what XOOM's actual or
 11 estimated supply costs were during the
 12 time period that you were a XOOM customer,
 13 correct?
 14 MR. WITTELS: Objection.
 15 A. So at the time when he had XOOM,
 16 everything was taken care of by my
 17 husband. Then when we filed a complaint
 18 and a lawsuit, that's when -- in my
 19 attention, that I started to see the --
 20 the table and the agreement and what the
 21 rates are.
 22 Q. Right. Maybe I'm asking a poor
 23 question. I'm not trying to.
 24 You directed me to Exhibit 3,
 25 which is the contract language, right?

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1 S. MIRKIN
 2 A. Right.
 3 Q. And specifically, the phrase
 4 "actual" -- "XOOM's actual and estimated
 5 supply costs," right?
 6 A. Mm-hmm.
 7 Q. And my question is just, do you
 8 today or have you ever known what XOOM's
 9 actual and estimated supply costs were?
 10 MR. WITTELS: Objection.
 11 You can answer.
 12 A. No.
 13 Q. Okay. Your husband enrolled the
 14 two of you in this contract with XOOM that
 15 we see at Exhibit 3, correct?
 16 A. Correct.
 17 Q. And the -- do you know how he
 18 enrolled?
 19 A. In my understanding, I think it
 20 was online.
 21 Q. Okay. And when did you first
 22 hear about XOOM?
 23 A. When we applied. When he talked
 24 about it, the different rates and what's
 25 out there was the lowest rate. So that's

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1 S. MIRKIN
 2 when I first heard about it.
 3 Q. Why did he enroll under your
 4 name?
 5 A. To have something under my name,
 6 to have residential proof.
 7 Q. Residential proof for you?
 8 A. Yes.
 9 Q. Did you need that for
 10 employment?
 11 A. For employment.
 12 Q. I see.
 13 At the time, did you understand
 14 that the rate that you were enrolling with
 15 XOOM was a rate that could vary from month
 16 to month?
 17 A. My husband probably did, but it
 18 wasn't in my understanding. When we
 19 applied, he told me it was the lowest
 20 rate, and I agreed, so he took care of the
 21 rest.
 22 Q. You didn't have an understanding
 23 as to whether the rate was fixed or
 24 variable at the time?
 25 A. No.

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1 S. MIRKIN
 2 Q. Okay. You're not claiming in
 3 this -- I understand that you take issue
 4 with the rates that XOOM charged, with how
 5 high they were --
 6 A. Mm-hmm.
 7 Q. -- right?
 8 A. Correct.
 9 Q. But you are not alleging that
 10 XOOM had no right to charge you a variable
 11 rate, right?
 12 MR. WITTELS: Objection to form.
 13 You can answer.
 14 A. Can you repeat that?
 15 Q. Sure.
 16 What I'm getting at is, you --
 17 you don't dispute that you and your
 18 husband enrolled in a variable rate plan
 19 with XOOM?
 20 MR. WITTELS: Objection to form.
 21 You can answer.
 22 A. If I understand that we enrolled
 23 in a variable rate? I do understand that.
 24 Q. Okay. And you understand that
 25 the contract permitted that rate to vary

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1 S. MIRKIN
 2 from month to month according to the terms
 3 of the contract?
 4 A. Correct.
 5 Q. Okay. Looking back at that
 6 phrase "actual and estimated supply
 7 costs" -- do you see that on Exhibit 3?
 8 A. Yes.
 9 Q. What does that mean to you, that
 10 the rate will be based on XOOM's actual
 11 and estimated supply costs?
 12 A. I'm not sure. It's for lawyers
 13 to figure it out.
 14 Q. Okay. You don't have any
 15 personal understanding --
 16 A. No.
 17 Q. -- of what that means?
 18 A. No.
 19 Q. Okay. And you don't have any
 20 personal understanding about what XOOM's
 21 actual and estimated supply costs were?
 22 MR. WITTELS: Asked and
 23 answered. Objection.
 24 You can answer again.
 25 A. Can you repeat that?

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1 S. MIRKIN
 2 Q. You don't have an understanding
 3 as to what XOOM's actual and estimated
 4 supply costs were, correct?
 5 MR. WITTELS: Okay. He's asked
 6 it about three times, but I'm going to
 7 allow you to answer again.
 8 MR. MATTHEWS: You just asked --
 9 you told me to ask it again.
 10 MR. WITTELS: No. I'm saying
 11 you already asked the question, and
 12 it's on the record that she's answered
 13 that question.
 14 But if -- we'll stop it at some
 15 point, but you can answer again --
 16 THE WITNESS: Mm-hmm.
 17 MR. WITTELS: -- if you
 18 understand the question.
 19 A. Can you repeat that?
 20 MR. WITTELS: Let's have the
 21 reporter read it back so he doesn't
 22 have to say it again.
 23 [Whereupon, a portion of the
 24 testimony was read back.]
 25 A. What they were? No. What they

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1 S. MIRKIN
2 MR. WITTELS: Objection.
3 A. If they're not allowed?
4 Q. It's not your position in the
5 case that XOOM is -- may not seek a profit
6 on its energy contracts?
7 A. It's not my position, no.
8 Q. Okay. You agree that XOOM can
9 seek a profit on its contracts?
10 A. XOOM or any --
11 MR. WITTELS: Objection.
12 You can answer.
13 A. XOOM or any company is allowed
14 to have a profit according to their
15 contract.
16 Q. And what the contract allows is
17 the only limit on that profit, right?
18 MR. WITTELS: Objection.
19 A. The only limit on their profit?
20 What does that mean?
21 Q. That the contract doesn't say --
22 let me ask it differently.
23 The contract doesn't say that
24 XOOM will only seek a specific profit
25 percentage, right?

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1 S. MIRKIN
2 A. It does not say that.
3 Q. Okay. And the energy markets do
4 not -- in New York, do not cap the profit
5 that XOOM can seek, right?
6 MR. WITTELS: Objection.
7 A. Do I know that?
8 Q. I'm asking.
9 A. I don't know that.
10 Q. Okay. With respect to utility,
11 do you know how XOOM's rates compared to
12 utilities rates during the time you were a
13 XOOM customer?
14 A. At that time?
15 Q. Mm-hmm.
16 A. Probably my husband does. I'm
17 not sure. I didn't deal with the rates
18 and everything. My husband did all of it.
19 Q. I don't mean it as a criticism.
20 This is my only opportunity to talk to
21 you, and I'm trying to get your best
22 testimony about what you know and you
23 don't know.
24 A. Mm-hmm.
25 Q. And if you don't know, that's

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1 S. MIRKIN
2 okay.
3 A. Mm-hmm.
4 Q. But that's my question. Today,
5 you don't know how XOOM's variable rates
6 compared to the utilities rates during the
7 time you were a XOOM customer, right?
8 MR. WITTELS: Objection.
9 A. No, I don't.
10 Q. Okay. You've continued looking
11 at the table on Exhibit 2, at the rates,
12 and I'm going to direct you to look at the
13 table, if you don't mind.
14 A. Sure.
15 Q. The first month, where your rate
16 was 8.99 cents per kilowatt hour -- do you
17 see that?
18 A. I see. In May through June?
19 Q. Yes, ma'am.
20 You are not arguing that that
21 rate was too high, right?
22 A. No.
23 Q. Okay. That rate, you do not
24 believe breached your agreement with XOOM,
25 right?

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1 S. MIRKIN
2 MR. WITTELS: Objection.
3 A. That rate, in knowledge of my
4 husband and I, that was a good rate.
5 Q. And your lawsuit against XOOM is
6 based on this contract that we looked at,
7 at Exhibit 3, right?
8 A. Right.
9 Q. And just for completeness, I'm
10 going -- Exhibit 3 is just the first page
11 of that contract, right? It's not the
12 full contract?
13 A. Correct.
14 Q. Okay. I'm going to mark as
15 Exhibit 5 a full copy of those terms and
16 conditions.
17 [Whereupon, document was marked
18 as Defendants' Exhibit 5 for
19 identification, as of this date.]
20 Q. And please take as much time as
21 you want to review it and confirm that
22 what I'm saying is accurate.
23 A. You want me to read the whole
24 agreement?
25 Q. No, no, no. I'm not instructing

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<p>1 S. MIRKIN</p> <p>2 don't remember anything specific about the</p> <p>3 decision to switch from XOOM to Viridian?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. You later sued Viridian</p> <p>6 in a putative class action like this one,</p> <p>7 right?</p> <p>8 A. Correct.</p> <p>9 Q. And why?</p> <p>10 A. Because of their rates.</p> <p>11 Q. What about their rates?</p> <p>12 A. We spoke to the lawyers, and</p> <p>13 they were overcharging us as well, so</p> <p>14 that's when we decided to sue them.</p> <p>15 Q. Okay. Tell me in your words</p> <p>16 what that case was.</p> <p>17 A. It was about the rates and how</p> <p>18 they were overcharging us.</p> <p>19 Q. Okay. And do you know how that</p> <p>20 case was resolved?</p> <p>21 A. Yes. It was settled.</p> <p>22 Q. When?</p> <p>23 A. I believe two years ago.</p> <p>24 Q. And what payment did you receive</p> <p>25 in connection with that settlement?</p> <p>Page 76</p>	<p>1 S. MIRKIN</p> <p>2 A. No.</p> <p>3 Q. -- or with -- about XOOM?</p> <p>4 A. No.</p> <p>5 Q. How did you find your lawyers?</p> <p>6 A. From Daniel, Daniel Hymowitz.</p> <p>7 Q. Is he someone you know?</p> <p>8 A. He's a family friend.</p> <p>9 Q. I see.</p> <p>10 And you spoke with him initially</p> <p>11 about Viridian? Well, strike that.</p> <p>12 I don't -- I don't mean to ask</p> <p>13 about discussions you had with your</p> <p>14 lawyers. I don't think that an initial</p> <p>15 consultation would be, but in any event,</p> <p>16 Mr. Daniel was the lawyer you first met</p> <p>17 with about a variable rate lawsuit?</p> <p>18 MR. WITTELS: Objection.</p> <p>19 Q. Is that right?</p> <p>20 A. With which company?</p> <p>21 Q. Any company.</p> <p>22 A. With Viridian and XOOM, correct.</p> <p>23 Q. Okay. Okay. We talked a little</p> <p>24 bit earlier about XOOM and other ESCOs</p> <p>25 seeking a profit in connection with their</p> <p>Page 78</p>
<p>1 S. MIRKIN</p> <p>2 A. I received \$10,000 under my</p> <p>3 name, and under 10,000 under my husband's</p> <p>4 name.</p> <p>5 Q. Okay. Ms. Mirkin, do you mind</p> <p>6 if we take a break?</p> <p>7 A. Sure.</p> <p>8 THE VIDEOGRAPHER: We're going</p> <p>9 off the record at 11:39 a.m.</p> <p>10 [Whereupon, a short break was</p> <p>11 taken.]</p> <p>12 THE VIDEOGRAPHER: We're back on</p> <p>13 the record at 11:52 a.m.</p> <p>14 Q. Ms. Mirkin, can you tell me the</p> <p>15 names of the lawyers who are representing</p> <p>16 you in this case?</p> <p>17 A. Steven Cohen, Daniel Hymowitz,</p> <p>18 and Steven.</p> <p>19 Q. Mr. Wittels?</p> <p>20 A. Yes.</p> <p>21 Q. Anybody else?</p> <p>22 A. No.</p> <p>23 Q. Okay. Do you have any</p> <p>24 agreements with other lawyers about this</p> <p>25 lawsuit --</p> <p>Page 77</p>	<p>1 S. MIRKIN</p> <p>2 business. Do you remember that?</p> <p>3 A. Correct.</p> <p>4 Q. Do you have any opinion about</p> <p>5 what's a reasonable profit margin for XOOM</p> <p>6 to charge?</p> <p>7 A. No.</p> <p>8 [Whereupon, testimony continues</p> <p>9 in confidential transcript.]</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 79</p>

1
2 A. No.
3 Q. Okay. Okay. Thank you very
4 much.
5 A. Okay.
6 THE VIDEOGRAPHER: We are off
7 the record at 12:08 p.m., and this
8 concludes today's testimony given by
9 Susanna Mirkin.
10
11 [TIME NOTED: 12:07 p.m.]
12
13 _____
14 SUSANNA MIRKIN
15 SUBSCRIBED AND SWORN TO
16 BEFORE ME THIS _____
17 DAY OF _____, 2022.
18
19 _____
20 NOTARY PUBLIC
21
22
23
24
25

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1
2 I N D E X
3
4 WITNESS EXAMINATION BY PAGE
5 SUSANNA MIRKIN MATT MATTHEWS 7, 94
6 STEVEN WITTELS 92
7
8 E X H I B I T S
9
10 PLAINTIFF'S DESCRIPTION PAGE
11 EXHIBIT 1 - CON EDISON RECORD 20
12 EXHIBIT 2 - PAGE 19 OF WITNESS'S 20
13 COMPLAINT
14 EXHIBIT 3 - FIRST PAGE OF SOME 20
15 CONTRACT TERMS AND
16 CONDITIONS
17 EXHIBIT 4 - BILLING INFORMATION 35
18 FOR BORIS MIRKIN,
19 21 PEGGY LANE, STATEN
20 ISLAND, NEW YORK 10306
21 EXHIBIT 5 - FULL COPY OF THOSE 71
22 TERMS AND CONDITIONS
23
24
25

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1
2 CERTIFICATION
3
4 I, Samuel Hittin, a Notary Public for
5 and within the State of New York, do
6 hereby certify:
7 That the witness whose testimony as
8 herein set forth, was duly sworn by me;
9 and that the within transcript is a true
10 record of the testimony given by said
11 witness.
12 I further certify that I am not
13 related to any of the parties to this
14 action by blood or marriage, and that I am
15 in no way interested in the outcome of
16 this matter.
17 IN WITNESS WHEREOF, I have hereunto
18 set my hand this 6th day of September,
19 2022.
20
21
22 
23 SAMUEL HITTIN
24 * * *
25

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1
2 ERRATA SHEET
3 VERITEXT/NEW YORK REPORTING, LLC
4
5 CASE NAME: SUSANNA MIRKIN AND BORIS
6 MIRKIN, ET AL VS. XOOM ENERGY,
7 LLC, ET AL
8 DATE OF DEPOSITION: AUGUST 30, 2022
9 WITNESS' NAME: SUSANNA MIRKIN
10
11 PAGE/LINE(S)/ CHANGE REASON
12
13
14
15
16
17
18
19
20
21 SUSANNA MIRKIN
22 SUBSCRIBED AND SWORN TO
23 BEFORE ME THIS _____ DAY
24 OF _____, 2022.
25
26 NOTARY PUBLIC
27
28 MY COMMISSION EXPIRES _____
29

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